

## **KAISER CASE DETAILS**

5/7/09

### **About Joseph Kaiser**

- Kaiser, of Tacoma, was the first foreclosure rescue scammer to be tried by the Attorney General's Consumer Protection Division, which works to enforce a fair marketplace for consumers and businesses. He is the author of several books that describe tactics for making fast profits in real estate with titles such as "Negotiate Foreclosures Like a Swat Team Leader," "Totally Dominate Your Foreclosure Marketplace" and "The Hired Gun Handbook." He has conducted seminars in Washington and California to teach his methods for earning large amounts of money through deals involving distressed properties.
- After being a party to roughly 50 lawsuits, he wrote "37 Ways to Bulletproof Every Foreclosure Deal, a book containing tactics and model legal documents designed to protect investors when being sued for using the methods he taught.
- Kaiser entered transactions with more than 300 property owners. No one has ever successfully regained their home from Kaiser.

### **March 14, 2007: Attorney General's Office announces settlement with real estate investors for "foreclosure rescue" violations**

- Attorney General's Office files a settlement in King County Superior Court with three Washington-based businesses: Fiscal Dynamics, Inc., of Tacoma; Cumulative LLC, of Tacoma, and Northwest Assets, of Seattle. Walt Scamehorn, of Tacoma, who owns Fiscal Dynamics and Cumulative, and E. Arliss Morgan, of Burien, who owns Northwest, also settle. Tina Worthey, of Burien, an agent of Northwest Assets, agrees to settle shortly thereafter.
- Joseph Kaiser, of Tacoma, is also named as a defendant in the suit as a previous owner of Fiscal Dynamics and Cumulative but declines to settle.
- According to the state's complaint also filed on March 14, 2007, the defendants told property owners they would pay off the delinquent taxes so that foreclosure could be avoided. They offered property owners money, sometimes as little as \$200, in exchange for the transfer of a title or interest in the property. Property owners were sometimes told that if they did not take the fee, they would receive no money after the foreclosure sale. Owners who agreed to receive "help" from the defendants were inundated with paperwork, including either a form that gave power of attorney to defendants or an "overage assignment form" that defendants asserted gave them the right to collect excess auction proceeds.
- The Attorney General's suit also alleged that legal documents used for these details were signed days, or even hours, before the pending foreclosure auction; that no notary was present at the time of the signing; and that the defendants sometimes notarized documents themselves.
- The defendants in the settlement denied any wrongdoing but agreed to pay \$290,000 in restitution. They also agreed to pay \$50,000 in civil penalties

(suspended, provided they comply with the settlement terms) and a total of \$30,000 in costs and attorneys' fees.

- They also agreed to a long list of injunctions when doing business with property owners facing tax foreclosure. Specifically, defendants are barred from:
  - Misrepresenting their purpose in contacting property owners as benevolent, disinterested or anything other than an attempt to earn a profit;
  - Representing that they can help the property owner avoid any of the consequences of foreclosure;
  - Obtaining a power of attorney or any other agreement that effectively transfers excess foreclosure sales proceeds to a third party which would normally be refunded to the person who owned the property at the time the court authorized the foreclosure;
  - Failing to provide owners of property subject to a pending tax foreclosure proceeding a written and oral notice that informs them of their right to consult with an attorney or financial advisor and explains the financial impacts of accepting the defendants' offer to pay delinquent taxes;
  - Taking any interest in property subject to a pending tax foreclosure proceeding where defendants have reason to believe the property owner expects to reacquire that interest from defendants in the future unless the cost and terms of reacquiring that interest have been fully disclosed;
  - Misrepresenting the material terms of any proposed real estate transaction;
  - Using the Public Records Act to obtain a list of people likely to enter tax foreclosure proceedings or currently in tax foreclosure proceedings in order to solicit them;
  - Engaging in any activities to conspire to manipulate the sales price of property at an auction or other sale;
  - Entering into any contract unless the property owner is given a written notice of their right to cancel within three business days. (Documents closed by an independent attorney or limited practice offer at that person's usual place of business are exempt from this provision.);
  - Acting as a trustee or other fiduciary when the defendants have a beneficial interest in the transaction or the property;
  - Offering courses that train others how to engage in any of the activities described above.

## **Leading up to trial**

- While preparing for trial with Joseph Kaiser, the Attorney General's Office reviewed 70,000+ pages of documents involving business dealings of Kaiser and his former partners and interviewed more than 80 witnesses.
- New allegations emerged. The state amended its complaint to add four additional businesses created by him: G. Hobus Investments, LLC; Bobo Buys Real Estate, LLC; Pre Flop, LLC; and Unclaimed Funds, Inc.

- Kaiser was accused of using unfair and deceptive tactics in at least two types of real estate investment transactions: a sale/buyback scheme and a tax overage scheme.
  - In the sale/buyback scheme, he was accused of obtaining ownership of homes with large amounts of equity for little or no cash, by using a complex and deceptive land trust agreement where Kaiser was made both trustee and co-beneficiary of the trust.
  - In other transactions, he was accused of using unfair and deceptive means to intercept the excess proceeds of tax sales that lawfully must be paid to the property owner who owned the property when taxes were declared delinquent.
- Moreover, the state alleged Kaiser schemed through his firm Unclaimed Funds, Inc., to collect a share of the restitution money that his former business partners agreed to pay under the March 14, 2007, settlement. Kaiser and others working for him made repeated, unsolicited contacts by mail and phone to individuals they believed were entitled to the settlement money and claimed to have located an “abandoned account” belonging to the recipients. As part of the scheme, the defendants created an “assignment agreement,” in which potential recipients agree to provide about a third of their restitution money to Kaiser and his colleagues in exchange for their help in obtaining the money.

**Nov. 21, 2008: Judge Palmer Robinson grants state’s motion for partial summary judgment. The order found that 24 of the defendants’ business practices violated the Consumer Protection Act.**

- Among other things, the court found that found that Kaiser’s solicitations that claimed to be helping people were misleading. Kaiser claimed he would help people save their homes from tax foreclosure but instead placed those homes in a land trust that gave him ownership and control of the homes and the right to sell the properties at will.
- The court ruled that Kaiser violated state law by making himself both trustee and co-beneficiary on the land trust he created and that he abused the powers of attorney he obtained from owners during what he called “partial interest deals.”

**Dec. 15-17, 2008, and Jan. 12-13, 2009: Kaiser tried in King County Superior Court on remaining allegations.**

- Assistant Attorneys General Jim Sugarman and Jake Bernstein represented the state in the trial before Judge Michael Trickey. They put 11 witnesses on the stand and presented more than 1,000 pages of real estate transaction documents and other exhibits.

**Feb. 6, 2009: Judge Michael Trickey issues decision on Kaiser case.**

In his findings of fact and conclusions of law, Trickey called Kaiser's contracts "grossly unfair."

"Mr. Kaiser testified that every partial interest deal he has created is actually in default. Therefore, none of the former homeowners maintains their right to possession of the property or a percentage of the proceeds if Kaiser chooses to sell it.

By virtue of the lease provisions and other contractual provisions for reimbursement of all Mr. Kaiser's expenses, his terms entitle him to receive either the entire home vacant or his share of the home's equity without having ultimately paid any money.

... Homeowners who enter the transactions believing they are saving their homes are actually stripped of any ownership interest and are not even given a right of first refusal to buy back their home. Mr. Kaiser can sell the property to anybody he wants at any price.

No fully informed person, not acting under compulsion, would enter a transaction with such onerous terms."

**Feb. 11, 2009: Judge Palmer Robinson orders injunctive relief.**

The defendants are permanently banned from soliciting or participating in any transactions involving properties facing foreclosure. They are also prohibited from:

- Misrepresenting their purpose in contacting property owners as benevolent, disinterested or anything other than pursuing a profit;
- Representing they can help stop foreclosure;
- Entertaining into an agreement to obtain the proceeds of any tax sale;
- Taking any interest in real property where the owner believes they have some right to reacquire that interest unless he makes five separate disclosures regarding the terms of the deal;
- Misrepresenting the true nature or material terms of the deal;
- Acting as a fiduciary or trustee in connection with any real property transaction where he obtains an interest.

In addition, Kaiser must: 1) Conduct all his deals through an independent attorney or limited practice officer, or give a three-day right to cancel and 2) Give any owner 24 hours to review his documents before executing an agreement to obtain any interest in real property.

**April 6, 2009: Judge Palmer Robinson orders restitution and penalties.**

Judge Palmer Robinson ordered the defendants to pay the following:

- \$179,100 in civil penalties
- \$2,871,117 in restitution for individuals who lost title to their homes PLUS \$654,624 in restitution for individuals who lost excess proceeds from tax foreclosure sale of their homes. Restitution was reduced by \$290,000, the amount already paid by former defendants, for an adjusted total of \$3,235,742.
- \$780,309 in costs and attorneys' fees.